



U.S. Department of Housing and Urban Development

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May 9, 2013

Mr. Tom Clifford, Cabinet Secretary
Department of Finance and Administration
The State of New Mexico
Office of the Secretary
180 Bataan Memorial Building
Santa Fe, NM 87501

Subject: The State of New Mexico 2013 CDBG and NSP Monitoring Review

Dear Secretary Clifford:

Commencing on April 2, 2013, we performed a monitoring review of the State of New Mexico Department of Finance & Administration, Local Government Division (DFA/LGD). The purpose of the review was to evaluate DFA/LGD's performance in administering the Community Development Block Grant (CDBG) and Neighborhood Stabilization Program (NSP) grant programs.

HUD reviewed DFA/LGD compliance with 24 CFR 570. This included overall program management, including national objective and eligibility, financial management, and Colonias. An additional review was performed on the NSP1 and NSP3 programs. We evaluated the State's performance in administering the NSP grant program and to determine compliance with NSP1 regulations at 73 FR 58330, revisions to these regulations in the NSP Bridge Notice, and compliance with NSP3 regulations at 75 FR 64322.

Following the review, the results of the on-site review were discussed and presented at the exit conference on May 06, 2013. The results of the review are outlined in the enclosed report. A Finding is a deficiency in meeting applicable regulatory or statutory requirements. A Concern is a performance problem or deficiency. The review resulted in four findings and three concerns.

DFA/LGD must provide HUD with specific timeframes and dates with a plan of action as to how the State will comply with all required corrections as outlined in this monitoring review report. Failure to provide HUD with this plan will result in the immediate withholding of all administrative funding until such time as the State responds to HUD's satisfaction. This is in accordance with 24 CFR 570.495(a)(1) and 24 CFR 570.496(b)(i).

If you have any questions, please contact me at (505) 346-7361.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of a large loop and a long horizontal stroke.

Frank Padilla
Director

Enclosures

cc: Honorable Susana Martinez, Governor of New Mexico
Community Development Council

**STATE OF NEW MEXICO - LOCAL GOVERNMENT DIVISION
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
NEIGHBORHOOD STABILIZATION PROGRAMS 1 AND 3 (NSP1, NSP3)
2013 HUD MONITORING REVIEW**

REVIEW SCOPE

The monitoring review focused on the following program areas: (1) Overall Program Management, (2) Financial Management, and; (3) Colonias.

OVERALL PROGRAM MANAGEMENT

During the 2013 review the State was monitored for compliance with the CDBG Program regulations at 24 CFR 570, including National Objective and Eligibility Compliance. The State was also monitored for compliance with NSP1 regulations at 73 FR 58330, revisions to these regulations in the NSP Bridge Notice, and compliance with NSP3 regulations at 75 FR 64322.

The following files were reviewed during the monitoring visit:

CDBG 2011 Projects:

1. City of Deming, IDIS Activity 7790, \$425,000
2. Town of Mesilla, IDIS Activity 7833, \$400,000
3. Guadalupe County, IDIS Activity 7842, \$500,000
4. San Miguel County, IDIS Activity 7844, \$334,790.21
5. Village of Fort Sumner, IDIS Activity 7850, \$450,000
6. DeBaca County, IDIS Activity 7851, \$449,999.49
7. City of Portales, IDIS Activity 7852, \$391,901.43
8. City of Carlsbad, IDIS Activity 7860, \$300,000

CDBG 2012 Projects:

1. City of Lordsburg, IDIS Activity 8166, \$422,000
2. Town of Taos, IDIS Activity 8221, \$480,000
3. Village of Loving, IDIS Activity 8226, \$422,000
4. Village of Mosquero, IDIS Activity 8277, \$388,187.68

On-Site Review:

1. Village of Fort Sumner

NSP1 and NSP3 files were also reviewed at the Local Government Division:

FINANCIAL MANAGEMENT

The Local Government Division was monitored for compliance with OMB Circular A-87 Cost principles for State and Local Governments, OMB Circular A-102 Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations, Treasury regulations at 31 CFR 205, Federal awarding agency regulations, and the terms and conditions of the award. Financial reporting, accounting records, cost allowability, and source documentation were reviewed. Support

documentation serving as backup for expenditures were reviewed in selected project files. HUD has requested the Technical Assistance budget and general ledger documentation, and we are still waiting for this information.

COLONIAS

The following Colonias files were reviewed during the monitoring visit:

1. City of Lordsburg, IDIS Activity 8166, \$422,000
2. Village of Loving, IDIS Activity 8226, \$422,000

FINDINGS

Finding 1

The State of New Mexico was negligent in its oversight and failed to meet Office of Management and Budget (OMB) requirements, Treasury regulations, and HUD regulations for Cash Management.

Condition:

The New Mexico Mortgage Finance Authority (MFA) returned \$13,534.96 in unused CDBG funds back to the State of New Mexico in November 2010. Upon review, HUD determined that these funds were not returned to HUD.

Criteria:

OMB Circular A-102 Paragraph 2.a.-Cash Management

Agency methods and procedures for transferring funds shall minimize the time elapsing between the transfer to recipients of grants and cooperative agreements and the recipient's need for the funds.

OMB Circular A-110 SUBPART C - Post-Award Requirements, Financial and Program Management .22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

Cash Management Improvement Act (CMIA), H.R.4279 - Section. 3335 - Timely disbursement of Federal funds.

(a) Each head of an executive agency (other than the Tennessee Valley Authority) shall, under such regulations as the Secretary of the Treasury shall prescribe, provide for the timely disbursement of Federal funds through cash, checks, electronic funds transfer, or any other means identified by the Secretary.

31 CFR 205.33 How are funds transfers processed?

(a) A State must minimize the time between the drawdown of Federal funds from the Federal government and their disbursement for Federal program purposes. A Federal Program Agency must limit a funds transfer to a State to the minimum amounts needed by the State and must time the disbursement to be in accord with the actual, immediate cash requirements of the State in carrying out a Federal assistance program or project. The timing and amount of funds transfers must be as close as is administratively feasible to a State's actual cash outlay for direct program costs and the proportionate share of any allowable indirect costs. States should exercise sound cash management in funds transfers to subgrantees in accordance with OMB Circular A-102 (For availability, see 5 CFR 1310.3.).

24 CFR 570.494 Timely distribution of funds by states.

(b) HUD will review each state to determine if the state has distributed CDBG funds in a timely manner. The state's distribution of CDBG funds is timely if:

(2) Recaptured funds and program income received by the state are expeditiously obligated and announced to units of general local government.

Cause:

Lack of oversight on part of DFA/LGD regarding cash management.

Effect:

The returned funds were not redistributed in a timely manner. Therefore the primary purpose of the CDBG program, to develop viable urban communities by providing decent housing, a suitable living environment, and expanding economic opportunities, principally for persons of low- and moderate-income, was not met with these funds.

Corrective Action:

DFA/LGD must immediately return these funds to the U.S. Treasury.

Finding 2

The State of New Mexico has been untimely in distributing program income.

Condition:

The City of Albuquerque generated \$1,526,506.58 in NSP program income, and has not been able to utilize the program income funds for 18 months due to the untimely distribution by the DFA/LGD. On November 7, 2011, March 14, 2012 and September 11, 2012 the City requested the use of program income again. On August 31, 2012 the City of Albuquerque requested the use of program income for the Atrisco Properties. On December 4, 2012 the DFA/LGD informed the City of Albuquerque they had approved the City of Albuquerque to use program income for the Atrisco Property. Over a year later on January 29, 2013 DFA/LGD advised the City of Albuquerque they would issue an amendment electronically with a hard copy to follow for the use of Program Income after the submitted a "Substantial Amendment" to the State of New Mexico in order to process the amendment; in addition, the State of New Mexico reduced Administrative funds from 7% to 5%. On February 12, 2013 the City of Albuquerque requested DFA/LGD consider increasing admin to 7% as originally funded. On March 19, 2013 DFA/LGD informed the City of Albuquerque they would approve 6% Administrative funds of Program

Income. However, the City of Albuquerque needed to submit a "Substantial Amendment."

In addition, NSP Contractor Kaspia sent a budget amendment request to the State of New Mexico on January 29th, 2013 in order to proceed with the purchase and rehabilitation of homes using NSP program income funds. To date, DFA/LGD has not provided an adequate response to Kaspia, nor has it amended the budget to allow Kaspia to proceed, which has caused undue hardship to this small firm and homebuyers.

Criteria:

24 CFR 570.494 Timely distribution of funds by states.

(b) HUD will review each state to determine if the state has distributed CDBG funds in a timely manner. The state's distribution of CDBG funds is timely if:

(2) Recaptured funds and program income received by the state are expeditiously obligated and announced to units of general local government.

Cause:

The review process the State of New Mexico has in place, which requires the legal division to review all contract and amendments, is inefficient and has caused undue delays in the review and execution of contracts and amendments.

Effect:

Since no one benefits from CDBG funds until specific activities are underway or completed, states must distribute the funds in a timely manner in order to benefit low- and moderate-income people. The distribution requirements allow states a reasonable time to administer the program while assuring that the funds are used as Congress intended. The CDBG statutory and regulatory requirements apply to NSP programs unless specifically waived by the NSP regulations. The Housing and Economic Recovery Act of 2008 was created as Emergency Assistance for the redevelopment of abandoned and foreclosed homes. Program Income funds are not being distributed timely, therefore, the funds are not being used as Congress intended.

Required Corrective Action:

DFA/LGD cannot require a "Substantial Amendment" to be completed by the City of Albuquerque, since a Substantial Amendment by HUD definition is a document that is used to amend the Consolidated Plan and Subsequent Annual Action Plans when the requirements of 24 CFR 91.505 have been triggered. Therefore, DFA/LGD must work with the City of Albuquerque to submit a budget request in accordance with the Grant Agreement Amendment #3, number 4 (between DFA/LGD and the City of Albuquerque). Grant Agreement Amendment #3, number 4 states "Any proposed changes to the budget by the Grantee to the budget established in the DRGR, from the effective date of this Amendment until the date of termination, shall only be permitted as follows: 1) the Grantee submits a formal written request to DFA by mail in accordance with Article XV of the Original Grant Agreement, including the old budget, new budget, and activity sheet and 2) the request is approved by DFA and HUD in writing." Therefore, HUD is requiring DFA/LGD to issue a Program Income Amendment in accordance with its own requirements outlined in Grant Agreement Amendment #3. The Program Income Amendment must be issued within the next 30 days and a copy of the amendment must be provided to HUD.

If we do not receive a satisfactory written response within 30 days, with specific timeframes and dates for the required actions, HUD will withhold all administrative funding until such time as the State responds to HUD's satisfaction. This is in accordance with 24 CFR 570.495(a)(1) and 24 CFR 570.496(b)(i).

Finding 3

The State of New Mexico has not been responsive to HUD.

Condition:

The Local HUD office has contacted DFA/LGD multiple times during the past year and requested timelines for the Neighborhood Stabilization Programs and for the Community Development Block Grant Section 108 Loan Guarantee program (Section 108) in order to determine timely distribution of funds. DFA/LGD has either responded with an unsatisfactory answer to HUD or has not provided a response to the Local HUD office. This office has worked with DFA/LGD for over 15 years, with mutual respect and excellent working relationship. HUD has never experienced the lack of responsiveness and insolence manifested by current DFA/LGD management. If this relationship is to improve, DFA/LGD must comply with all requests and inquiries made by HUD staff.

October 19, 2012, HUD advised DFA/LGD that HUD did not believe the State of New Mexico had capacity to continue to administer the NSP programs due to lack of response/oversight of subrecipients. On November 9, 2012, DFA/LGD responded to HUD that they were aware of the issues and concerns raised in HUD's letter. On December 11, 2012 HUD notified DFA/LGD that there were still several issues with the NSP programs, and that HUD was still concerned with the administrative capacity in being able to administer the NSP programs. On December 18, 2012 HUD requested a timeline as to the use of program income for the City of Albuquerque and a timeline as to when NSP programs would be transferred to MFA, if the DFA/LGD chose to do so. On December 31, 2012 the DFA/LGD responded to HUD by stating "I cannot give a specific timeframe for resolving all these issues." On April 5, 2013 HUD requested a status of the NSP Programs in regards to the use of program income and the program income amendment. As of May 1, 2013 DFA/LGD has not responded to HUD in regards to the status of the NSP programs or the use of Program income for the City of Albuquerque.

On March 1, 2013 HUD contacted DFA/LGD and requested a timeline as to when they would be sending the signed Section 108 loan agreement and the special conditions that are contained in the funding agreement between HUD. HUD requested the timeline to be provided no later than March 15, 2013. On March 15, 2013 DFA/LGD responded to HUD that a timeline was not available and HUD would receive the timeline on March 20, 2013. On March 20, 2013, the DFA/LGD had not provided HUD with the required timeline. HUD notified DFA/LGD that they had to provide the timeline to HUD no later than March 22, 2013. On April 8, 2013 HUD still had not received the requested a status in regards to the Section 108 program and requested a status in regards to the timeline. As of May 1, 2013 the DFA/LGD still has not responded to HUD.

In addition, on February 1, 2013 HUD was informed that the Section 108 Environmental Review

for RITech Global would be sent to HUD by the middle of March after the comment period. On March 20, 2013 HUD requested a status as to when HUD could expect the Environmental Review for the Section 108 program. As of April 29, 2013 DFA/LGD has not responded to HUD in regards to Environmental Review for the Section 108 program.

Criteria:

24 CFR 570.493- HUD's reviews and audits

(b) *Information considered.* In conducting performance reviews and audits, HUD will rely primarily on information obtained from the state's performance report, records maintained by the state, findings from on-site monitoring, audit reports, and the status of the state's unexpended grant funds. HUD may also consider relevant information on the state's performance gained from other sources, including litigation, citizens' comments, and other information provided by the state. A State's failure to maintain records in accordance with § 570.490 may result in a finding that the State has failed to meet the applicable requirement to which the record pertains.

24 CFR 570.494 - Timely distribution of funds by states.

(c) HUD may collect necessary information from states to determine whether CDBG funds have been distributed in a timely manner.

Cause:

DFA/LGD does not have staff capacity in management position with oversight responsibility for HUD programs.

Effect:

HUD is unable to determine if the State is meeting the requirements under § 24 CFR 570.493 and § 24 CFR 570.494. Since no evidence has been produced by the State of New Mexico, HUD has made the assumption that the State of New Mexico is not distributing funds in a timely manner and does not have the capacity to carry out CDBG and NSP programs.

Required Corrective Action:

Within 30 days, the State of New Mexico must provide the Local HUD office with the following items:

- Activity descriptions for the Section 108 program so that the local HUD can make a written determination of the following: *(i) the activity meets the eligibility requirements of 24 CFR 570.703. (ii) each eligible activity to be undertaken or supported with loan guarantee funds will meet the nation objective requirements of 570.208 and, (iii) the applicable public benefit standards will be met, in accordance with 570.209 (b).*
- Section 108 environmental review for REitech Global LLC.

In addition, within 30 days, the DFA/LGD must provide the Local HUD office with a written determination as to what is happening with the Neighborhood Stabilization Programs. Is DFA/LGD going to continue to administer the Neighborhood Stabilization Programs, or will the programs be transferred to the New Mexico Mortgage Finance Authority? If the programs will be transferred, DFA/LGD must provide HUD with a detailed management plan with a plan

outlining how and by when the transfer will be made.

If we do not receive a satisfactory written response within 30 days, with specific timeframes and dates for the required actions, HUD will withhold all administrative funding until such time as the State responds to HUD's satisfaction. This is in accordance with 24 CFR 570.495(a)(1) and 24 CFR 570.496(b)(i).

Finding 4

HUD has received numerous complaints regarding LGD/DFA's performance in administering HUD grants.

Condition:

The Local HUD office has received twenty three citizen complaints between November 2012 and April 2013 in regards to the State of New Mexico's Community Development Block Grant Program and Neighborhood Stabilization Programs. Citizens have informed HUD that Grant Agreements, Grant Amendments, and Request for Payments are delayed and untimely.

Criteria:

24 CFR 570.493- HUD's reviews and audits

(b) *Information considered.* In conducting performance reviews and audits, HUD will rely primarily on information obtained from the state's performance report, records maintained by the state, findings from on-site monitoring, audit reports, and the status of the state's unexpended grant funds. HUD may also consider relevant information on the state's performance gained from other sources, including litigation, citizens' comments, and other information provided by the state. A State's failure to maintain records in accordance with § 570.490 may result in a finding that the State has failed to meet the applicable requirement to which the record pertains.

Cash Management Improvement Act (CMIA), H.R.4279 - Section. 333 - Timely disbursement of Federal funds.

(a) Each head of an executive agency (other than the Tennessee Valley Authority) shall, under such regulations as the Secretary of the Treasury shall prescribe, provide for the timely disbursement of Federal funds through cash, checks, electronic funds transfer, or any other means identified by the Secretary.

OMB Circular A-102 Section 2A-Cash Management

Agency methods and procedures for transferring funds shall minimize the time elapsing between the transfer to recipients of grants and cooperative agreements and the recipient's need for the funds.

Cause:

The review process the State of New Mexico has in place, which requires the legal division to review all contract and amendments, is inefficient and has caused undue delays in the review and execution of contracts and amendments.

Effect:

Delay in Grant Agreements for Units of General Local Government (UGLG) forced a delay in

the implementation of their CDBG project by missing the window of opportunity for construction, due to weather conditions. Delay in Grant Agreement Amendments has forced UGLG to go without payment for months or not be able to close a project timely. Delay in Grant Agreement Amendments for NSP Programs has caused the programs to be delayed. Delay in Requests for Payment has forced some UGLG to go without payment, putting the UGLG in a financial bind.

Required Corrective Action:

Within 30 days, the State of New Mexico must provide the Local HUD office with written policies and procedures on how the State will eliminate the time elapsing between Grant Agreements, Grant Amendments, and Request for Payments for both the CDBG and NSP Programs. The Request for Payment procedures must be in accordance with the Cash Management Improvement Act of 1990.

Concerns

Concern No. 1

Per State CDBG requirements, all grants must be monitored once a year for the life of the grant. The first monitoring review has to be completed within one year of grant execution. Per review of the DFA/LGD, it was determined that several monitoring reviews were late.

Recommended Action

DFA/LGD needs to ensure that it follows its CDBG monitoring requirements.

Concern No. 2

Review of the NSP3 program revealed that the State of New Mexico is slow in meeting the LH25 requirement which states that "No less than 25 percent of the funds shall be used to house individuals and families whose incomes do not exceed 50 percent of area median income." As of the time of the review the State has 13% toward this requirement, with over 86% of the grant drawn. The grant expires in March 2014.

Recommended Action

DFA/LGD needs to closely monitor this requirement to ensure that it is met.

Concern No. 3

DFA/LGD has lost most of its management staff that has knowledge and experience with HUD programs. Sam Ojinaga who was the Deputy Director of the Local Government Division was removed after 14 years of experience. Dolores Gonzales, Community Development Bureau Chief, is leaving after 16 years of experience. Barbara Romero, Assistant Bureau Chief, is leaving after 9 years of experience.

Recommended Action

It is HUD's opinion that the State of New Mexico DFA/LGD should evaluate its ability to continue to administer the CDBG Section 108 and NSP programs. DFA/LGD was never designed to administer housing programs; that is why the New Mexico State Legislature created the MFA. We therefore strongly recommend that the NSP program be transferred to the MFA.

The MFA presently successfully administers several HUD housing programs, and has indicated their willingness to administer NSP.

Furthermore, the lack of capacity and understanding of economic development on the part of the DFA/LGD has caused serious delays in implementing the Section 108 Program. The State of New Mexico has a very capable and knowledgeable Department of Economic Development that could very easily administer the Section 108 Program. It is our recommendation that the Section 108 program be administered by the Economic Development Department.